

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

PET MEMORIES, INC.;

Cedar County, Iowa

ADMINISTRATIVE ORDER

NO. 2012-SW- 20

TO: Stephen Johnson
Pet Memories, Inc.
618 235th Street
Tipton, IA 52772

I. SUMMARY

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Pet Memories, Inc. to resolve violations related to the illegal disposal of dead animal carcasses at a property located in Cedar County, Iowa.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Kurt Levetzow, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, IA 52353-1623
Phone: 319-653-2135

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Pet Memories, Inc. operates an animal crematorium in Cedar County, Iowa pursuant to Iowa Air Quality Construction Permit No. 04-A-552 and Air Quality Facility ID No. 16-01-006. Steve Johnson is the primary owner and operator of the facility. The facility accepts the carcasses of dead animals for incineration or burial. The primary office of Pet Memories, Inc. is located at 618 235th Street, Tipton, Iowa.

2. On June 29, 2004, the DNR entered into a Consent Administrative Order with Pet Memories, Inc. to resolve violations related to the operation of an incinerator without an Air Quality Permit. Pursuant to this Administrative Consent Order, Pet Memories, Inc. obtained a construction permit and paid an administrative penalty of \$700. \$500 of the penalty was paid as a supplemental environmental project to the Cedar County Conservation Board.

3. On March 28, 2008, the DNR sent a letter to Pet Memories Inc. documenting the illegal disposal of 19 horse carcasses on its property. Pet Memories, Inc. was directed to properly dispose of the carcasses.

4. On March 31, 2008, the Iowa Department of Agriculture and Land Stewardship (IDALS) issued a cease and desist order directing Steve Johnson and Pet Memories, Inc. to cease the transportation and disposal of dead animals. The order was appealed.

5. On April 4, 2008, Pet Memories, Inc. was provided written information in regard to the legal requirements for dead animal composting in Iowa.

6. On April 7, 2008, the DNR, in the course of investigating a complaint, observed that approximately 12 horse carcasses had been illegally buried on the subject property and an additional 19 carcasses piled on the property. By letter dated April 11, 2008, DNR directed Pet Memories, Inc. to properly dispose of all horse carcasses on the property.

7. On August 4, 2008, the Iowa Department of Inspections and Appeals upheld the IDALS cease and desist order and directed Steve Johnson and Pet Memories, Inc. to discontinue the pet cemetery unless and until a license is obtained from IDALS pursuant to Iowa Code chapter 167. The necessary license was obtained in 2008, but has subsequently been rendered unnecessary by revisions to the Code of Iowa. Chapter 167 does not authorize or otherwise regulate the burial of unrendered animal carcasses.

8. On August 30, 2011, the DNR received a complaint in regard to black smoke and odors coming from the incinerator at the Pet Memories, Inc. property. The complainant also alleged that carcasses were being buried on the site.

9. On September 7, 2011, DNR Environmental Specialist Kurt Levetzow contacted Steve Johnson by telephone. Mr. Johnson acknowledged that animal burial was occurring but indicated that this was a lawful pet cemetery.

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10. On September 23, 2011, the DNR inspected the Pet Memories, Inc. property. The facility was not operating at the time. On October 12, 2011, the DNR issued a letter to Pet Memories, Inc. specifying operational procedures that should be followed for the incinerator and once again notifying Steve Johnson that the burial of dead animal carcasses is prohibited.

11. On November 22, 2011, the DNR inspected the Pet Memories, Inc. property and met with Steve Johnson. Mr. Johnson acknowledged that he has continued to bury dead horses. Evidence of recent burial was observed by the DNR. A Notice of Violation was issued on December 6, 2011.

12. On June 15, 2012, the DNR received a complaint alleging the continued burial of dead horses by Mr. Johnson on his property.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The DNR has documented that Pet Memories, Inc. has violated these provisions.

2. Iowa Administrative Rule 567 IAC 100.4(2) establishes the requirements for the disposal of dead farm animals, including horses. Pursuant to rule 100.4(2)"b", the farm animals must result from an operation on the premises of disposal and must be buried in compliance with the specific burial requirements contained in rule 100.4(2) "b" & "c". Pet Memories, Inc. has violated this provision.

V. ORDER

THEREFORE, the DNR orders Pet Memories, Inc., to do the following:

1. Pet Memories, Inc. shall cease the burial of dead animal carcasses at its property in Cedar County, Iowa and at any other property except to the extent authorized by 567 IAC 100.4.
2. Pet Memories, Inc. shall pay an administrative penalty in the amount of \$10,000 within 60 days of the issuance of this Order.

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VI. PENALTY

Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$10,000. The administrative penalty is determined as follows:

Economic Benefit – Pet Memories, Inc. has achieved an economic benefit from the illegal disposal of dead animal carcasses. Avoided costs include fuel and maintenance for the animal crematorium. Pet Memories, Inc. has also been paid to accept the dead animals. Based upon average area landfill fees of \$42 per ton and an estimate of a minimum of 20 horses accepted per year for multiple years, a penalty of \$3,000 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. The repeated burial of multiple dead animal carcasses in a relatively small area threatens to contaminate groundwater. The illegal conduct has occurred continuously since at least 2008. Based upon these considerations, a penalty of \$3,000 is assessed for this factor.

Culpability – Pet Memories, Inc. has been repeatedly informed of the applicable prohibitions and has willfully ignored the requirements of law. Pet Memories, Inc. is in the business of dead animal disposal and is aware of the applicable requirements. Despite being instructed by state and local officials to cease the illegal activity, Pet Memories, Inc. has continued to openly violate the law. Based upon these considerations and multiple violations over several years, a penalty of \$4,000 is assessed for this factor.


VII. APPEAL

Pursuant to Iowa Code section 455B.308 and 561 IAC 7.4(1), as adopted by reference at 567 IAC 7.1, a written Notice of Appeal to the Commission may be filed within 30 days of issuance of this Order. The Notice of Appeal should be filed with the Director of the DNR, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal.

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VIII. NONCOMPLIANCE

Failure to comply with this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.307. Total compliance with all provisions of Section "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this Order.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 12th day of
September, 2012.

Field Office #3; V.I.C;